

The Appeals Board will first address the motions filed by the claimant to dismiss the respondent's application for review. Claimant first argues that the respondent's application for review was filed out of time. The respondent's first application for review was timely filed on September 1, 1995, within ten (10) days of the effective date of the Administrative Law Judge's Preliminary Hearing Order dated August 29, 1995. However, this application for review identified the Kansas Workers Compensation Fund as the appealing party. Subsequently, the respondent filed another Application for Review on September 13, 1995 identifying the respondent and its insurance carrier as the appealing parties. The Appeals Board finds that the respondent's first application for review contained a clerical error which was subsequently corrected by an amended application for review which relates back to the first application which was timely filed.

Next, the claimant requests the Appeals Board to dismiss the respondent's amended application because it identifies the insurance carrier to be Travelers Insurance Company instead of St. Paul Fire & Marine Insurance Company. The Appeals Board has reviewed the whole preliminary hearing record and has been unable to ascertain from the record whether St. Paul or Travelers is the insurance company that provided the respondent with coverage on the date of claimant's accidental injury of May 4, 1994. However, the Appeals Board finds that the respondent is correctly identified as the claimant's employer on the date of his accidental injury and the question as to the identity of the insurance company that had coverage on that date is not before the Appeals Board. Accordingly, claimant's Motion to Strike, Dismiss and Impose Sanctions is also denied by the Appeals Board.

The respondent argues that the claimant's current need for medical treatment and temporary total disability benefits is due to an intervening accident that claimant sustained to his left knee on April 1, 1995, while he was self-employed and not employed by the respondent. When an intervening accident is alleged, the Appeals Board has jurisdiction to review a preliminary hearing order as it raises the issue as to whether or not the claimant's accidental injury arose out of and in the course of his employment with the respondent. See K.S.A. 44-534a(a)(2).

The respondent admits that claimant suffered an injury to his left knee on May 4, 1994, while employed by the respondent. Claimant's left knee injury was treated by Stanley L. Demski, M.D., of the Hutchinson Clinic, in Hutchinson, Kansas. After an MRI, Dr. Demski diagnosed an anterior cruciate tear and a tear of the lateral meniscus. The anterior cruciate tear was surgically repaired by Dr. Demski on July 27, 1994. Thereafter, claimant received physical therapy treatment and was returned to his regular work on November 17, 1994. He was returned to his work with a left knee brace prescribed by Dr. Demski, to be worn while he was performing his duties as a roofer.

Claimant testified that on April 1, 1995, while he was performing roofing activities as a self-employed roofer, his left knee "popped" as he was swinging his leg around to get on a ladder. At the time that he swung his leg around, the leg was straight and not twisted or bent. After this incident, claimant went to the emergency room at Hutchinson Hospital for examination of his left knee. A few days later, on April 4, 1995, claimant saw Dr. Clarence R. Hart, of the Hutchinson Clinic, who aspirated his left knee. Claimant was followed by the doctors at the Hutchinson Clinic until he was released for sedentary work on August 16, 1995. Dr. Clarence Hart, in his treatment note dated August 16, 1995, diagnosed post-operative ACL repair with anterior instability and pain. Dr. Hart went on to relate this diagnosis to an injury claimant sustained in the work place and to his subsequent operation. Dr. Hart opined that the anterior instability and pain were related to the work place. At the time of the preliminary hearing, claimant remained off work and testified that his left knee remained symptomatic.

The Appeals Board finds that the Administrative Law Judge's Preliminary Hearing Order dated August 29, 1995, that granted claimant's request for preliminary benefits should be affirmed. The preliminary hearing record which contains claimant's testimony and medical treatment records establishes that it is more probably true than not that claimant's current left knee complaints are a natural and probable consequence of his original knee injury which occurred while he was employed by the respondent on May 4, 1994, instead of a new intervening accident alleged to have occurred on April 1, 1995.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Preliminary Hearing Order of Administrative Law Judge John D. Clark, dated August 29, 1995 should be, and is hereby, affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of November 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: E. Dexter Galloway, Hutchinson, Kansas
Scott J. Mann, Hutchinson, Kansas
John D. Clark, Administrative Law Judge
Philip S. Harness, Director